

Chapter 811. CHOICES. (Formerly JOBS).

TANF Employment Program and Full Employment Pilot Project -Wheels to Work SB 1114 -Texans Work SB 781 – Microenterprises -HB 1 Rider 27(c) --Subsidized employment. -Individual development acct. –HB 1 (Rider 27(b)) Long-term Success for TANF Recipients allocation \$3,000,000/yr. Job - and reemployment services (possible rules); -SB 60 Requires care takers relatives and parents who are receiving assistance, to take parenting skills training as needed. Dependent children and teen parents are to attend school unless exempted. HB 3428 TWC & DHS adopt procedures that relieve victims of family violence from certain welfare reform requirements. Prior rules repealed and new rules adopted.

Chapter 811. Job Opportunities and Basic Skills

The Texas Workforce Commission (Commission) adopts the repeal of §§811.1-811.5, 811.10-811.23, and 811.60 relating to the Job Opportunities and Basic Skills and new §§811.1, 811.2, 811.11-811.20, 811.31-811.34, 811.41-811.45, 811.61-811.65, 811.81-811.87 and 811.101, concerning the Choices rules. Sections 811.2, 811.13, 811.18-811.20, 811.42, 811.44, 811.45, 811.62, 811.87 and 811.101 are adopted with changes to the proposed text as published in the January 2, 1998, issue of the *Texas Register* (23 TexReg 101).

Rules of the Texas Department of Human Services (DHS) relating to employment services include the following: requirements of applicants and recipients of temporary cash assistance to attend workforce orientation sessions and to participate in employment services; the exemptions from participation requirements; determination of good cause for failure to participate; and financial penalties applied to benefits resulting from noncompliance. The Commission, where applicable, cross-references those rules for the purposes of continuity or clarity. Although these rules govern services available through the Temporary Assistance for Needy Families (TANF) block grant funds, participants are eligible for and receive services funded through other resources, including the Job Training Partnership Act (JTPA), Wagner-Peyser Employment Services, and the Adult Education Act, as amended by the National Literacy Act. Local workforce development boards have the jurisdiction and the authority to develop local policy, to determine service delivery practices and procedures, to set the services and activities available in each local workforce development area, and to choose the locations where services are available and delivered consistent with federal and state regulations, rules, and policies.

Eligibility requirements for receipt of temporary cash assistance benefits under the jurisdiction of the DHS include the requirement to work or participate in the state's employment services program which replaces the JOBS Program. Failure of an applicant or a recipient of temporary cash assistance to fulfill this requirement results in denial of the application or a financial penalty (sanction) placed on the cash assistance grant for each month of noncompliance. The current financial penalty for failure to participate in employment services is a maximum of \$78 per month for one parent. In two-parent households, if both parents do not comply, the penalty is a maximum of \$125 per month.

Some commenters were for the rules and others had concerns and questions about the rules as proposed and suggested changes. Comments were received from the following: a Texas Senator's office, a Texas Representative, West Central Texas Workforce Development Board, Tarrant County Workforce Development Board, Texas Council on Family Violence, North Central Texas Council of Governments, Houston Welfare Rights Organization, Texas Legal Services Center, and an individual representing herself. Following each comment is the Commission's response.

Comments regarding §811.2 Definitions are as follows.

Comment: A commenter requests a change in the definition of employability plan. The commenter suggests that the employability plan is a contractual agreement and should be signed by both the participant and the Choices staff member to be valid.

Response: The Commission agrees that both parties to the agreement should sign the employability plan. The definition in the proposed version did not intend to imply that only the participant would sign the agreement. Rather its intention was to clarify that, because the agreement is used to base compliance decisions, it is necessary for the participant to sign. To avoid confusion, however, the definition of employability plan has been revised. The second sentence of that definition now reads, "The plan, signed by the participant and the Choices staff member, is the participation agreement for compliance purposes."

Comment: A commenter requests a clarification in the definition of good cause determination to not exclude exempt clients. Exempt clients may be granted good cause. The commenter asserts that if an exempt client fails to participate and the good cause reason continues, the case should be closed.

Response: The definitions in this section provide context for the use of terms in other sections of Chapter 811. The Commission acknowledges that good cause may be determined for exempt participants, but it does not have the same outcome as good cause determinations for nonexempt participants. The term good cause is used in other

sections to indicate exceptions for initiating sanctions. Again, to avoid misinterpretations, we will delete the word "nonexempt" from the definition of good cause.

Comments regarding §811.11 Eligibility are as follows.

Comment: A commenter suggests that the language in subsection (a) should be modified to add the words "able-bodied" or "non-disabled" preceding "applicants and recipients." The commenter asserts the reason for this change would be that incapacity of an adult is a qualifying factor for temporary cash assistance under DHS rules at 40 TAC §3.1701. Cash assistance recipients can have \$3,000 in countable resources, while Supplemental Security Income (SSI) recipients can have only \$2,000 in countable resources.

Response: The Commission's intent in this rule is not to specify who is or is not eligible for temporary cash assistance, but to state the eligibility criteria for receipt of Choices services. As the commenter pointed out, the DHS is the rulemaking authority for TANF eligibility requirements, and their rules are found in 40 TAC Chapter 3.

Therefore, as currently worded, 40 TAC §811.11 appropriately states the eligibility for Choices. Although clients may be exempt from, or have good cause for, not working or participating in employment services due to disability or incapacity, they remain eligible for Choices services. Program staff may outreach or offer services to assist such clients in obtaining employment and self-sufficiency.

Comments regarding §811.12 Participation Requirements are as follows.

Comment: A commenter states that subsection (a) of this section specifies that DHS will determine who is mandated to participate in the Choices Program. The commenter points out that current DHS policy states that teens 16 years of age or older who have dropped out of high school and who are in an active TANF case are mandated to participate in the program. The commenter is concerned about the way participation is counted at the federal level. The commenter asserts that the employment services activity of a mandatory teen may not be counted in the participation rate formula. The commenter asks if there will be rules that mandate Choices Program staff to outreach, assess, and counsel these teens.

Response: The Commission does not plan to specify in rules any requirements as to the level of outreach or services available for mandatory teens who are part of another assistance unit. This is a decision best left to local programs and is impacted both by participation rate performance measures and local resources and funding. DHS will refer teen parents applying for TANF services who are the head of the assistance unit to the program for mandatory workforce orientation sessions and employment planning sessions. These teen parents are to be served in accordance with rules at §811.17, relating to Choices Services Strategies. Local program planning should promote collaborative arrangements necessary for providing or referring both mandatory and voluntary teens for appropriate educational, supportive, and workforce services.

Comment: A commenter suggests that subsection (b)(1) of this section needs clarification as to whether people who reapply for TANF after being denied are also considered applicants and therefore required to attend an orientation.

Response: The requirement for applicants to attend a workforce orientation session is included in the rules of both DHS and the Commission. Technically, anyone who requests an application is considered an applicant, regardless of whether the person previously received TANF and was denied. Therefore, as currently worded, the rule applies to all applicants. DHS determines who must attend an orientation session. The Commission has made no change to §811.12(b)(1) because of this comment.

Comment: A commenter requests that subsection (b)(2) of this section be clarified to specify that a sanction can be initiated for someone who is scheduled for more than the federal minimum participation requirement.

Response: The Commission disagrees that §811.12(b)(2) requires clarification about initiating a sanction for noncompliance with participation requirements beyond the federal minimum requirements. This section does not address sanctions for noncompliance which are included in §811.14. We believe that the rule as currently worded is sufficient in that it addresses recipients being required to participate in activities for the required number of hours per week as stipulated in the federal requirements or in an employability plan. The rule then clarifies that compliance is based on the number of hours in the employability plan, even if that number is greater than the federal minimum requirement.

Comment: A commenter asks if staff will be required to monitor the ancillary services in subsection (b)(4) of this section as outlined in §811.18. The commenter questions if the activities count toward participation since §811.16(b) specifies that counseling or other services to address family violence and other crisis situations may be included in the participant's employability plan.

Response: Monitoring all components of a participant's employability plan is part of effective case management and is necessary to determine program compliance. The intent of §811.18 is to ensure frequent tracking and reporting of employment services activities and provision of timely intervention necessary for both client participation monitoring and quality client services. If ancillary services are included in a participant's employability plan, and the hours of required activity can be verified, those hours can be included as participation provided they qualify as an

allowable activity. No changes have been made to §811.12(b)(4) as a result of the comment. The Commission has changed the language in the first sentence of §811.18 to clarify the intent of monitoring and to provide for more local flexibility, as explained in responses to §811.18.

Comment: A commenter asserts that instead of requiring recipients to participate in ancillary services as specified in subsection (b)(4) of this section, the statement should allow flexibility for the employment goal to be changed. If the recipient chooses not to utilize the ancillary services, the Choices staff should be allowed to reassess the recipient regarding the employment goal.

Response: The Commission does not believe that the rule language at subsection (b)(4) of this section precludes prudent case management or staff decisions about updating employability plans to accommodate individual needs of program clients. The intent of this rule is to list the participation requirements. The key word in §811.12(b)(4) is "required." If ancillary services are found to be required in order to remove barriers to participation or to obtaining a job, and the participant refuses to accept the service referral or participate in the services, then nonparticipation could be an issue. An example would be someone who participates in job search for the number of required hours, but does not obtain a job because he appears for interviews inebriated. Program staff may include drug and alcohol treatment or counseling for the individual in an employability plan and, if necessary, give the client good cause for a period of time to allow for services to be effective. Failure of the client to follow through with the ancillary services could be cause for a sanction.

Comment: A commenter requests a clarifying change in subsection (b)(5) of this section to stipulate that "if the job offer pays at least minimum wage, the recipient must accept it."

Response: This provision is covered in §811.13(8) which allows the client to show good cause for failure to accept a job offer paying less than the minimum wage. Therefore, the Commission has not made the suggested change to §811.12(b)(5).

Comments regarding §811.13 Good Cause are as follows.

Comment: A commenter suggests that §811.13(1) should be modified to insert the words "or permanently" between the words "temporarily" and "ill." The commenter states that it would not make good sense to grant good cause to a temporarily incapacitated person, while denying good cause to a permanently incapacitated person.

Response: The Commission's rules at §811.13, relating to good cause, are the same as current policy under the state welfare waiver approved by the federal government. Therefore, the Commission will not make substantive changes to §811.13(1). Good cause determinations are applied when a non-exempt TANF recipient demonstrates a reason for inability to participate in work or employment-related services. Permanent incapacity or disability would result in the recipient's referral to DHS to redetermine employment services or exemption status under the rules at 40 TAC Chapter 3.

Comment: A commenter supports the purpose of §811.13(2), but requests that the rule be amended to include meetings with probation or parole officers as good cause. The commenter bases this request on the high percentage of people on parole or probation in the state. The commenter suggests that the intent of the rule should not exclude persons who are required to meet with a state or federal probation or parole officer.

Response: The Commission agrees that good cause could be applied to a participant required to meet with probation or parole officers. However, the Commission believes that making the suggested language change in §811.13(2) would be considered a substantive revision to the state waiver provisions. Therefore, the Commission prefers to provide additional guidance on addressing a participant's legal matters through written program guidelines.

Comment: A commenter suggests that §811.13(3) seems to indicate that persons who have not completed high school have less good cause than high school graduates, and notes that the reverse is more logical.

Response: The rule as proposed is consistent with the state's welfare waiver. Therefore, the Commission declines to change §811.13(3). Both state and federal welfare reform statutes emphasize the requirement for parents to complete high school. Excluding a caretaker who has not completed high school from claiming good cause for not participating more than 20 hours per week, regardless of the age of the child, is consistent with policy governing school attendance.

Comment: A commenter states that §811.13(4) is similar to the good cause provision in §811.13(10), and asks if it is necessary to make the distinction between someone who is a caretaker of a physically or mentally disabled child and someone who has a family crisis.

Response: Although the Commission agrees with the commenter that family crisis could fit some of the other specific good cause provisions, we are maintaining the rule as proposed in order to be consistent with the good cause policy in our state welfare waiver.

Comment: A commenter recommends deleting §811.13(8) which allows good cause for an individual not accepting employment offers below minimum wage and changing the language in §811.12(b)(5) to specify that recipients

must accept a job offer unless it results in below minimum wage employment. The commenter suggests that this could eliminate some work associated with good cause determination.

Response: The Commission agrees that this could be an alternate method of incorporating the policy. However, substantive changes to good cause provisions would impact the state waiver. Prior to any need for determining good cause, there must be some form of nonparticipation, such as failure to accept a job offer. Therefore, the Commission declines to revise the rule.

Comment: Two commenters request a change to the six-month timeframe as specified in §811.13(10). The commenters state that the limits for granting good cause for domestic violence purposes should be consistent with state law rather than the proposed TANF federal regulations, which have not yet been finalized. House Bill 3428, passed by the Texas Legislature in 1997, provides for waivers of certain eligibility requirements for victims of domestic violence, including work requirements. The state law further specifies that the requirements would not be waived for more than one year. The proposed federal regulations for TANF specify a six-month limit for granting good cause exemption for domestic violence purposes, and the preamble to those regulations states that such an exemption could be extended. The commenters request that the language in the last sentence of §811.13(10) be changed to read, "Good cause shall not be extended beyond one year for domestic violence purposes," or that the rule be changed to provide for an extension of the good cause provision for up to a total of one year, depending on the needs of the individual.

Response: The Commission has revised §811.13(10) to provide for extensions of good cause for family violence purposes not to exceed twelve months. This is consistent with state statute and the preamble to the federal TANF regulations.

Comments regarding §811.17 Choices Services Strategies are as follows.

Comment: A commenter requests that the Commission clarify the rule relating to the Work First service delivery approach and service strategy described in subsection (b) of this section. The commenter asserts that the state-established guidelines referenced in this subsection should be reviewed to ensure that sufficient flexibility is provided for local workforce development boards. The commenter asserts that the local workforce development boards should determine the services, approaches, and length of service as long as they are in accordance with the Work First philosophy.

Response: The Commission agrees with the commenter that flexibility for local areas to set policy and plan service delivery is important. The Commission believes that subsection (f) of this section provides the local flexibility as requested. We are committed to ensuring that, to the degree possible, program rules and policy will not restrict local authority and decision making. Throughout the development of these program rules, we evaluated the requirement and need for state policy as it related to local authority and flexibility. The Welfare Reform Division will involve local workforce development boards and local Commission staff in the development of written Choices Program guidelines. Prior to release of the final guidelines, there will be a state and local review and comment period.

Comment: A commenter asks whether the rule on Work First precludes the option of providing short-term skills training for high demand occupations for those most qualified for the training. The commenter asks if a recipient would have to go through the Work First model and fail before being allowed the opportunity to participate in short-term training. The commenter references §811.62, which indicates that education and training services may be authorized under the program.

Response: The Personal Responsibility and Work Opportunities Reconciliation Act sets forth expectations for programs and communities to move welfare recipients into the workforce. The Commission's Work First philosophy, policy, and service strategy contained in this rule are based on federal law and state welfare reform legislation in House Bill 1863, which emphasize time-limited benefits, personal responsibility, work, and retention of individuals in the labor market. Texas Human Resources Code §31.0126 requires DHS and the Commission to develop, by rule, a Work First program that offers a participant job readiness training, employment information, and employment services to motivate the participant to find and apply for a job. Section 31.0126 also requires development of alternate work programs and activities for persons needing work-based experience and training to obtain unsubsidized employment. Section 811.17(b) of the proposed rules does not preclude consideration of short-term training or skills development for participants engaged in job search services if it is determined they need education or training in order to be considered for available job openings in the job market. Additionally, basic skills and training may be combined with employment and work-related activities to assist participants in obtaining higher-level positions.

Comment: A commenter suggests that §811.17(b) be reworded to reflect that local workforce development boards may delegate the development of written policy guidelines to their subcontractors.

Response: State law specifies that the local workforce development boards are directly responsible and accountable to the workforce development division for planning, oversight, and evaluation of all workforce programs in their

area. To the extent that development of policy pertains to those responsibilities, it is clearly a local workforce development board responsibility. This does not, however, preclude local workforce development boards from soliciting input from their subcontractors and the community. Therefore, the Commission declines to revise this rule. Comment: A commenter requests a clarification regarding §811.17(d) relating to program services for teens. If a teenage participant has completed high school or GED, will staff have the option to refer the client to job skills training or to an employment activity?

Response: Determining what services teens need is a local decision. The rules provide those with knowledge the flexibility needed to serve the local population. Therefore, the Commission believes that no rule change is needed. Comments regarding §811.18 Monitoring of Participation are as follows.

Comment: A commenter requests clarification about whether local workforce development board contractors would be required to obtain permission from the Commission as to which participants can be exempted from the weekly monitoring requirement stipulated in this section. As the basis for this question, the commenter references the language in the rule that states, "unless less frequent monitoring is approved under written guidelines by the Commission."

Response: The timeframe for monitoring clients' participation is a local decision. The Commission suggests weekly monitoring, but has revised the rule by substituting the following two sentences for the first sentence of the proposed rule: "Choices staff shall monitor the participation in employment services activities, compliance with program requirements, and progress toward achieving the goals and objectives in the employability plan. Monitoring shall be ongoing and frequent, as determined by local workforce development boards or their subcontractors."

Comment: A commenter states that the frequency of monitoring should be a decision made by the local workforce development board, not the Commission. The commenter also requests the word "monitor" be defined, as it could be interpreted differently.

Response: The Commission agrees, and has amended §811.18 to reflect that the frequency of monitoring is a local decision. The rule as revised specifies the type of monitoring to be conducted.

Comments regarding §811.19 Individual Development Accounts are as follows.

Comment: A commenter states that the goal in the creation of individual development accounts (IDA) is commendable.

Comment: A commenter questions the restriction that IDAs must be administered by the Commission or through contract with a public or nonprofit entity. If this is not required, the commenter requests that the Commission allow local control and administration of such accounts. This would assist in obtaining matching funds and ensure that each area establishes IDA programs that are based on local needs. The commenter states that local workforce development boards should be a party to any decision regarding the selection of an IDA contract manager, as well as establishing guidelines for use of IDAs.

Response: The current rule, as written, does not preclude IDA programs from being developed in local workforce development areas. Texas Labor Code §301.067 requires the Commission to establish and implement a pilot program that establishes IDAs for TANF recipients who are participating in the subsidized work program. To fulfill this mandate, the Commission is requesting a rule change from DHS to disregard IDA balances as resources when determining eligibility for cash assistance. In addition, DHS may have to request a federal waiver from the United States Department of Agriculture (USDA) to exclude IDA balances from food stamp resource limits. If waivers are granted that extend to local areas, local workforce development boards may develop IDA programs. To avoid possible confusion as to who may administer the program, commas are added between "nonprofit" and "private" and between "private" and "or public entity."

Comment: A commenter questions whether TANF recipients will be allowed to make deposits into the account from sources other than temporary cash assistance funds.

Response: Participants are not required to limit the source of deposits into an IDA to cash assistance funds. The Commission, local workforce development boards, or entities administering the IDA may restrict the source of deposits to earned income or other sources if they are providing matching funds.

Comment: A commenter asks what entity determines which recipients are eligible to participate in the individual account program.

Response: TANF recipients in the pilot program area who are participating in the subsidized employment program are eligible to participate in the IDA pilot program. If local workforce development boards implement an IDA program, the local workforce development board or its subcontractor will determine which recipients are eligible to participate, subject to DHS' rules and approval of a federal waiver from USDA.

Comment: A commenter asks about the benefits of participating in an IDA if matching funds are not available.

Response: If matching funds are not available, the benefit of participating in an IDA program would be reduced. However, if USDA grants a federal waiver of food stamp eligibility requirements, the non-matched deposits in the

IDA would allow the participant to accumulate more resources without losing eligibility for food stamps or cash assistance.

Comment: A commenter asks who is responsible for locating matching funds.

Response: The Commission, local workforce development boards, or entities administering the IDA program are responsible for identifying sources for matching funds.

Comment: A commenter questions if the match is dollar for dollar.

Response: The match is not required to be dollar for dollar. The ratio of matching contributions to participant deposits will be determined by the availability of funds.

Comments regarding §811.20 Employment Retention and Re-Employment are as follows.

Comment: A commenter asks if the intent of the requirement in §811.20 (a) is to monitor individuals as long as they remain eligible for temporary cash assistance or as long as they receive cash assistance. The commenter suggests that some individuals who remain eligible may choose not to receive those benefits due to employment, and it would be difficult to monitor employment for persons not actually receiving cash assistance.

Response: The Commission agrees that the rule on monitoring and reporting of employment hours at subsection (a) of this section should be clarified. The rule is therefore revised to read, "Monitoring of employment retention and reporting hours of employment are required for at least the length of time the participant receives temporary cash assistance."

Comment: Two commenters ask for clarification about the timeframe in which employment retention and re-employment services may be provided. Can an individual request services at anytime after denial of cash assistance regardless of how long the individual has been denied?

Response: The Commission believes it is unnecessary to set a maximum timeframe in which employment retention and re-employment services may be provided to persons who have been denied temporary cash assistance. The extent to which these services are provided, as well as the timeframe, is a local decision. Subsection (c) of this section states that "employment retention and re-employment services may be made available...beyond denial of temporary cash assistance benefits." Allowing a local workforce development board to make this decision is consistent with the philosophy of local flexibility throughout the rules in Chapter 811.

Comment: The commenter asks how long an individual would be eligible for child care under subsection (c) of this section and what is the appropriate funding source.

Response: Transitional child care is available for up to 12 months or 18 months after cash assistance denial for employed individuals as specified in §811.83. Transitional child care for unemployed individuals may be provided for up to eight weeks to complete education or training and for up to four weeks to seek employment. Section 811.20(c) is revised to provide a cross-reference to the child care rules at 40 TAC Chapter 809 to clarify eligibility for child care. Child care provided beyond the time limits for transitional child care would use child care funds for income-eligible clients through the Child Care Management System or welfare-to-work grant funds, at local option.

Comment: A commenter requests that the phrase "as quickly as possible" in §811.20(c)(5) and (6) be defined or that the rule language be modified to specify that this timeframe is to be determined by the local workforce development boards.

Response: The Commission believes that "as quickly as possible" is not a phrase that must be defined. It depends on many variables, such as the condition of the local labor market, resources available, and the client's individual situation. The Commission has modified the language in §811.20(c)(5) and (6) to indicate that the provision of job readiness, job search, job placement, and job development services is a local decision.

Comments regarding §811.42 Subsidized Employment are as follows.

Comment: A commenter suggests that §811.42(b) conflicts with §811.13(3) that states that caretakers with children under the age of six cannot be required to participate more than 20 hours per week. The commenter asks if this requirement does not apply to subsidized employment.

Response: The hours per week requirement for subsidized employment in §811.42(b) is not in conflict with the rule for good cause in §811.13(3). The rule language specifies that the participant is encouraged, not required, to work between 35 and 40 hours per week. If a participant claims good cause due to the weekly hours required for the specific position, then the client would not be required to participate in that activity or in the specific position. Consideration could be given to assigning the client to a subsidized employment position that is 20 hours per week, or including some other appropriate activity in the client's employability plan.

Comment: A commenter supports the goal of same wages and benefits incorporated in (c)(2) of this section.

Comment: A commenter has questions and concerns about specifications in (c)(4). The commenter questions who will be responsible for writing the contract with the employer, including determining the amount of the wage subsidy.

Response: Consistent with legislative intent, §811.42 supports local control for local workforce development boards electing to operate this program and encourages public and private partnerships. Local workforce development boards have the authority to negotiate subsidized employment contracts with employers; to decide which participants are enrolled in this activity; to determine the length of any individual subsidized employment placements not to exceed four months; to set the amount of the wage subsidy; and to negotiate policy and contract provisions determined necessary to protect the local workforce development board, the intent of the program, and the participants.

Comment: A commenter states that the rule is not clear how the diverted benefits will be distributed to the employer, and is concerned that the rule divides responsibilities between local staff and the Commission. The commenter believes this may create parallel systems at the state and local level as well as unnecessary reporting.

Response: The term "Choices staff," as used throughout these rules, includes Commission staff and contracted services providers. The term is not meant to impose dual responsibilities on Commission staff, local workforce development boards, and contract staff. However, the wage subsidy is derived from public assistance benefits that are under the jurisdiction of another state agency. Therefore, it is prudent to have a degree of state control over the system of transferring benefits for the subsidy portion. An interagency agreement between DHS and the Commission establishes a state methodology for the diversion of the public assistance benefits. The Commission is committed to developing the most efficient and cost effective procedures for distribution of payments to participating employers.

Comment: A commenter suggests that language be added to ensure that employers retain participants who successfully complete the contract in order to eliminate misuse of this program and the participants.

Response: The Commission agrees that the purpose of implementing subsidized employment is to provide placements that lead to unsubsidized employment and self-sufficiency for the participant and the family. In entering subsidized employment contracts with employers, local workforce development boards or their subcontractors may consider terms encouraging the retention of subsidized employment participants in an unsubsidized employment position. As this is a local decision, the Commission declines to revise the rule.

Comment: A commenter requests that the rule specify which entity is responsible for paying workers' compensation for participants in subsidized employment.

Response: The Commission has revised §811.42 by adding subsection (e) to clarify that the subsidized employment participants are considered employees of the subsidized employment employer.

Comments regarding §811.43 Work Skills Training are as follows.

Comment: A commenter states that the rule on Work Skills Training seems similar to the "unpaid work experience" component. The commenter asks if the number of hours worked and wages earned must be equivalent to the grant amount.

Response: The new Chapter 811 replaces the rule on unpaid work experience. The Work Skills Training replaces the unpaid work experience component, and complies with state legislation that requires the Commission to develop and implement a volunteer work program. The Commission believes that the rule language as written ensures that the intent of this activity is to obtain training in work skills that will improve the employment prospects for participants. The client is not paid wages in this activity. Written program guidelines will prescribe procedures for establishing maximum hours for this activity per recipient.

Comments regarding §811.44 Texans Work Program are as follows.

Comment: A commenter states that the Texans Work Program should be designed to be administered locally.

Response: The Commission supports the commenter's position that the Texans Work Program should be administered locally. We do not believe that the rule as written contradicts local control and local development of this program.

Comment: A commenter states that, when feasible, it is reasonable to have the Texas Skills Standards Board approve the curriculum. However, as there are few areas where standards are established, it is not reasonable to require every training program be reviewed. Local workforce development boards already have responsibility for identifying demand and target occupations and approving training providers. Therefore, they are capable and should be allowed to approve local training programs. The commenter suggests that, based on their knowledge of the local labor market, the local workforce development boards are in a better position than the Commission to approve such training.

Response: The Commission agrees that local workforce development boards have the local expertise, information, and the responsibility for ensuring that training programs are consistent with the demand and target occupations. However, Senate Bill 781 mandates that training programs be approved by the Commission and the Skills Standards Board. In writing guidelines for approval of training courses, the Commission will support local decision-making

and local approval to the greatest extent possible. Until skill standards are developed, the Skills Standards Board involvement will be collaborative, rather than as an approval body.

Comment: A commenter asks if the local workforce development board can begin working on a Texans Work Program as soon as the rules are published, or whether the program will be piloted.

Response: Local workforce development boards may develop a Texans Work Program as soon as final policy guidelines are issued, any necessary DHS rule changes are completed, and a federal waiver request is submitted to, and approved by, the USDA.

Comment: A commenter supports the goal of creating a training stipend for trainees in the Texans Work Program as specified in subsection (h).

Comment: A commenter believes that the language in subsection (h) indicates that the only allowable assistance for a participant is that authorized by DHS staff and would preclude receipt of assistance from Choices staff, JTPA staff, or other state or local providers. The commenter asserts that appropriate Choices staff or case management staff of a local contractor should make the determination of assistance.

Response: The language in subsection (h) is specific to the receipt of a training stipend by Texans Work Program participants. Such stipend is in addition to the cash assistance and food stamp benefits provided by DHS. It is not the intent of the Commission through these rules to restrict any local decisions on the amount of assistance, services, or support to participants in the Choices Program, which lead to employment and self-sufficiency. Some types of financial assistance provided to temporary cash assistance recipients from other programs impact their eligibility for or the amount of cash assistance received.

Comments regarding §811.45 Self-Employment Assistance are as follows.

Comment. A commenter states that, to the extent possible, small business development centers should be utilized to provide this assistance, rather than creating another entity or program. These programs already provide these services and should be used. If contracting with small business development centers is not available in certain areas, the local workforce development boards should be allowed to contract with established entities rather than the Commission contracting for these services.

Response: The language in §811.45 does not restrict local workforce development boards from establishing contracts with appropriate entities for self-employment assistance services. Subsection (b) stipulates that the microenterprise development program is a type of self-employment assistance and that the microenterprise development program is to be administered centrally, which is consistent with the Appropriations Act, 95th Legislature, Regular Session, Article IX, Rider 27.

Comment: A commenter has several questions and comments regarding the microenterprise development program. How will the participant's income and asset accumulation affect the qualification for cash assistance, food stamps, and/or an IDA? Will encouragement of this program suddenly force participants off public assistance as soon as they receive a small loan? The commenter states that it takes time for a small business to become profitable enough to enable a person to become self-sufficient.

Response: A participant's income and asset accumulation can affect both eligibility for food stamps and TANF cash assistance, as well as the amount of benefits. In calculating net income, which determines the benefit amount, some business-related expenses will be deducted from gross self-employment income. Costs that are allowable deductions from gross income are detailed in DHS' Income Assistance Handbook. Households are subject to resource limits to maintain eligibility for food stamps and cash assistance. A household is not eligible if the total value of available resources exceeds \$2,000, or \$3,000 if the household has a member age 60 or over. Income producing property, except real property, that is essential to a household member's self-employment does not count toward the resources limit. Rules to be developed by DHS for the IDA program will determine how a participant's income and asset accumulation affect qualifications to participate in an IDA. The Commission plans to implement an IDA program targeted for participants in subsidized employment. Local workforce development boards may develop and implement an IDA program in their area.

The receipt of a small loan will not affect a participant's eligibility for cash assistance, but the available amount does count toward the resource limit in determining eligibility for food stamps. However, if income-producing property is purchased with loan funds as a condition of the loan, then that amount of the loan does not impact eligibility.

Comment: A commenter states that the four optional assistance services should be optional for the participants in a microenterprise program, but not optional for the local service delivery provider. The commenter states that the contractor should ensure access to any and all of the services within an accessible area if the individual chooses these services. The commenter suggests that entrepreneurial training should be available for every participant in the program.

Response: The Commission agrees with the commenter's suggestion that the service provider should offer the full range of microenterprise development assistance services to each participant in the program. Training should be

provided to enable each participant to reach an acceptable level of proficiency in business skills prior to receiving financial assistance through the program. The Commission has revised the language in subsection (d) to read, "Self-employment assistance services available to all participants in the program shall include, but not be limited to: (1) entrepreneurial training, a required activity for each participant in the program;" Sections 811.45(d)(2)-(4) are unchanged.

Comment: A commenter suggests that financial assistance should include access to both small loans and credit, as well as to savings accounts.

Response: The Commission plans to provide financial assistance through loans initially. We are currently studying ways to enable recipients of cash assistance to accumulate savings to finance business start-up through IDAs. An issue that requires resolution is the asset limits for TANF and food stamp assistance that would require changes in DHS policy and a possible waiver of federal regulations. Another issue is the considerable cost of administering an IDA program.

Comment: A commenter requests information on the type of outreach that will be done to ensure proper notice of the Request for Proposal to potential contractors.

Response: Consistent with state administrative practice requirements, the Commission will publish a Request for Proposal (RFP) for the microenterprise development program in the Texas Register. We will also send notice of the RFP to potential bidders that appear on our list of self-employment assistance services vendors. That list includes all providers who have contacted us since passage of the appropriation. Service providers that wish to receive notice of the RFP may contact the Commission's Welfare Reform Division at (512) 463-2222.

Comment: A commenter asks if the RFP will be open to service providers, research and academic agencies, or both. The commenter states that the contractor should be able to collect pertinent performance data and administer appropriate monitoring and evaluation mechanisms of all three program sites. The commenter states that for future funding and possible expansion of the program, the legislature will need information on both the participant's experience and outcomes and the program styles and approaches.

Response: The RFP will be open to a provider with experience in credit-based programs. The Commission agrees that a thorough evaluation of the program is essential and will ensure that the criteria for selection in the RFP will include necessary reporting capabilities.

Comment: A commenter asks the Commission to consider allocating the \$2 million appropriation primarily towards microenterprise and self-employment assistance. The commenter states that other local innovations that receive funding should complement the needs of those receiving microenterprise assistance.

Response: The majority of the \$2 million appropriations to the Commission has been allocated to self-employment assistance. Some funds will be allocated for local innovation grants to encourage local workforce development boards and community partners to test new ideas for empowering TANF recipients to attain self-sufficiency.

Comments regarding §811.62 Educational Activities are as follows.

Comment: A commenter requests a definition of "postsecondary vocational education" in item (5) and for "vocational job skills."

Response: The Commission has included definitions for vocational education and job skills training in §811.2, relating to Definitions.

Comment: Two commenters are concerned about the language in subsection (5) related to postsecondary vocational education and the 12-month timeframe. They ask how the vocational and time limit restrictions in the rule impact self-initiated education and training, such as a client who is in the senior year of college. One of the commenters states that, historically, the program supported completion of baccalaureate degrees within any time limits set by policy. Does the new rule require the client to go to work even if it means dropping out of college?

Response: The Commission has revised §811.62(5) to allow for the consideration of self-initiated postsecondary education. While federal law is very specific regarding education and training, TANF does allow states to include, as work activities, all those activities currently authorized under a state's waiver. Therefore, the Commission has some latitude to define education and training activities and agrees that it may not be in the best interest of a TANF recipient or of the program goals to require a client to drop out of school.

Comments regarding §811.81 Support Services are as follows.

Comment: A commenter suggests adding a rule to require written notification to applicants and recipients regarding the availability of support services. The commenter provides as a reason for this change DHS' record of informing clients. The commenter suggests that, for the Commission to not inform applicants and recipients in writing of the support services available, the Commission may appear less informative than DHS. The commenter continues the rationale by asserting that, because the premise for support services is to foster transition to employment, it makes sense to give written notice of the support services available. The commenter recommends development of a

brochure as a means of informing clients about services available, and offers the assistance of the Texas Clients Council in providing Spanish language for the brochure.

Response: The Commission agrees with the commenter about the importance of providing information regarding Choices services to temporary cash assistance applicants and recipients. In relation to workforce orientations, we believe that §811.17(a) is sufficient rulemaking about client informing wherein it specifies that clients be informed about services available through Choices. The commenter's perception that Commission staff or local workforce development board service contractors do not provide appropriate information to program participants causes concern. Commission staff and local workforce development board contractors ensure that clients are fully informed about the local labor market, the services available to them in seeking employment, and the employability planning options. Services are individualized and employability plans are based on a full employment assessment. Support services for employment or participation in activities are provided as needed. Therefore, the Commission disagrees that the rule needs revision. We will take under advisement the suggestion to develop a new client brochure and appreciate the offer of assistance. DHS and Commission staff distribute several brochures to clients. Local workforce development boards or their contractors may develop client informing materials that best describe the employment picture and services available in the local area.

Comments regarding §811.83 Transitional Child Care are as follows.

Comment: A commenter suggests that local workforce development boards should be allowed to establish guidelines on the length of transitional child care for unemployed participants. The commenter asserts that local workforce development boards should be able to provide child care services while an individual is engaged in work search activities based on locally established policies.

Response: The transitional child care services and timeframe are based on child care rules at 40 TAC Chapter 809. The Commission's rule on the timeframe for provision of transitional child care services for someone who is not employed is up to four weeks to allow for job search as stated in §811.83 (3). We believe that no change in §811.83 is necessary.

Comments regarding §811.84 Transportation are as follows.

Comment: A commenter requests clarification regarding transportation assistance and asks whether there are any Commission limitations established for that assistance.

Response: The Commission believes that this is an area best left to local control. We, therefore, do not plan to set state-prescribed limits on the amount or methods for providing this assistance.

Comment: A commenter asks about the suggested method of tracking the transportation money.

Response: The Commission does not plan to prescribe any single method for tracking support services payments. Written program guidelines will provide suggestions about methods for providing transportation and for tracking support services payments. Transportation support services for individual clients must be entered into the state-automated client activity and service reporting system in order to maintain state and federal program and expense reporting requirements.

Comments regarding §811.85 Work-Related Expenses are as follows.

Comment: A commenter requests clarification regarding work-related expenses and the provision allowing local workforce development boards to develop policies on the methods and limitations for provision of work-related expenses. The commenter asks whether the Commission will place limits on the amount of money the contractor can provide for these expenses per client.

Response: As this is an area best left to local control, the Commission does not intend to set state-prescribed limits on the amount or type of work-related expenses that could be covered under the program.

Comments regarding §811.86 Wheels for Work are as follows.

Comment: A commenter asks if there are model programs for providing such services as Wheels for Work and, if so, where, how, and with what results.

Response: Several states are exploring ways to move the concept of the Wheels for Work into practice. A program in Florida operates entirely without state support and has transferred 30 vehicles to single working mothers. That program relies heavily on the donations of one car dealer, who also provides repairs and contributes to the cost of insurance. New York and Maryland also have programs with limited successful transfers of automobiles.

Comment: A commenter asks how many donated vehicles are estimated in Texas.

Response: The Commission's pilot program in the Dallas/Fort Worth area has transferred one automobile to date. We anticipate additional vehicle transfers this spring. The pilot program relies on a broad coalition of community, state, and local workforce development partners. The Commission believes that the best chance for success in the program lies in the strong partnership with the automobile industry, which has participated in the pilot since its inception. We have no basis for estimating the number of vehicles that could be donated through the program in

Texas. With the involvement of the Texas Automobile Dealers Association statewide, there is some promise of meaningful results for the program.

Comment: A commenter states that liability insurance is very costly for individuals who may be receiving only minimum wage. Donations are probably used vehicles and vulnerable to repair and maintenance needs. With these combined costs, few people will be able to benefit from the program although the transportation is needed.

Response: Local workforce development boards may decide on paying or providing work-related expenses, including transportation costs for clients in their programs, as specified in §811.85. Assistance with some of the initial insurance costs could be included as a work-related transportation expense, at local option.

Comment: A commenter asks if there is a limit for reimbursing qualified repair expenses, and who determines this.

Response: Reimbursement for necessary repair expenses could be covered as work-related expenses at the option of local workforce development boards. The Commission has not set limitations on the amount of work-related expenses that can be covered. Local workforce development boards may develop policy on the methods and limitations for provision of work-related expenses, as specified in §811.85(b).

Comment: A commenter asks if car pool or van services should be an option in addition to donating vehicles to individuals. The commenter suggests that this would seem to reach those participants who cannot afford the insurance and upkeep of a donated vehicle.

Response: Local workforce development boards may also offer car pool and van services as an option for participants in the program and as a support for employment and employment retention. Traditionally, the employment services program has encouraged clients to use car pools, vans, and other public or private transportation methods when those methods are the most economical and meet the participants' needs. The transportation barriers faced by the Choices Program participants are complex and vary from person to person and from area to area. Many approaches and interagency and inter-program coordination are required at the state and local levels to adequately address the overall problem.

Comments regarding §811.87 GED Testing Payments are as follows.

Comment: A commenter requests clarification of the rule to read that "payments for GED testing shall be made by the Commission, local workforce development board or its contractor."

Response: The commission agrees and has made this change in the rule.

Comments regarding §811.101 Fair Hearings or Appeals are as follows.

Comment: Two commenters state that the appeal period specified in subsection (b) should be extended to be consistent with DHS' rules. One commenter specifies that it should be extended to 90 days. One commenter suggests that if the client appeals within 10 days of the notice of termination, reduction, or suspension of services, services should continue unchanged until the appeal is decided. The commenter suggests language to this effect. The commenter's reason for requesting this change is consistency with DHS procedures and long-standing Texas practice. The commenter continues by stating that the preservation of the status quo avoids irreparable harm if the decision being appealed is erroneous. The commenter believes that the existence of an appeal procedure implies that erroneous decisions may occur. The commenter believes that, just as with the DHS client services, there is a risk that inaccurate information may result in improper service denial. The option of maintaining the status quo, if requested, will serve the useful purpose of avoiding service interruptions that may be found unjustified.

Response: The Commission believes that 30 days is sufficient time for a client to decide to request a hearing. Due to the nature of employment services activities and the support services that assist clients in working or participating in those activities, it is often inappropriate to continue employment services activities or support services for those activities pending the outcome of an appeal. Therefore, the Commission has not made these requested changes to the rule.

Comment: A commenter requests deleting "upon request" from the last sentence of subsection (b). The commenter believes that the concepts in DHS' rule at 40 TAC §79.1201 should be incorporated in this rule. The commenter suggests adding language requiring Choices staff to inform persons aggrieved by any Choices decision or policy of their right to a fair hearing; to explain the procedure for an appeal, the person's right of appeal, and the right to be represented by others, including legal counsel; and to provide information to service applicants and recipients concerning available legal services in the community. The commenter also suggests that legal services' information be provided through notices in each office. The commenter recommends that the rule provide for the appellant to review appeal procedures that are available in the offices of Choices staff. The commenter's reasons for this change are that it is the approach long used in Texas and would promote accuracy in decision-making under Choices. He asserts that, if appeal procedures are not known, they may as well not exist. The commenter asserts that since workplaces are required to inform employees, without request, of their rights under workers' compensation, equal employment opportunity, and family leave laws, it makes analogous good sense for the suggested revisions to be made.

Response: The Commission agrees to modify this section to provide for notification to clients of their right to appeal and the procedures for requesting an appeal. The last sentence in subsection (b) has been revised to read, "Choices staff shall inform participants of their right to appeal a decision of Choices staff related to employment services or support services and the procedures for requesting a fair hearing." The Commission believes, however, that the level of detail suggested by the commenter for the rule is unnecessary for rulemaking. Local workforce development boards operating the program may develop policies and practices providing this level of detail. General Comments Comment: A commenter asks if the way single-parent (all-family) households are counted for participation rates will be changed.

Response: Yes. The method for determining participation rates for both all-family cases and two-parent family cases has changed.

Comment: A commenter asks if cases, rather than clients, are counted in both the numerator and the denominator. If so, the commenter questions what happens to all of the clients being served who are mandatory teens. Will they not be counted in the numerator portion of the participation rate formula? If that is the case, if a parent is not meeting participation requirements, but the teen member of the household is meeting the requirements, will the case be counted toward participation?

Response: The state bases the all-family rate on the number of single parent and two-parent family cases meeting work requirements for at least 20 hours per week divided by the number of cases with clients that the state required to participate in the Choices Program minus the number of cases subject to sanction and the number of cases that have good cause. Sanctioned cases are excluded from the participation rate base only for three out of twelve months. The state bases its two parent participation rate on the number of individuals in two-parent family cases meeting work requirements for an average of at least 35 hours per week divided by the number of two-parent family cases that the state requires to participate in the Choices Program minus the number of cases subject to sanction and the number of cases with good cause.

The participation of mandatory teen clients who are members of an assistance unit is no longer counted towards the participation rate calculations. Therefore, if the adult or parent is not meeting the participation requirement, but the teen is, the hours of activity for the teen will not be counted toward participation.

Comment: A commenter asks about rules that address clients who have gone from exempt to mandatory while certified. The commenter asks that since Choices is the only outreach discussed in the rules and is the primary way to outreach participants, how will the local workforce development board contractors be expected to outreach this population of clients?

Response: The rules in Chapter 811 govern the Choices Program services. The term Choices does not relate to any single outreach method or specific activity within the array of services included in these rules. Section 811.15 provides for a variety of methods for accessing Choices services. These include direct referrals, outreach, and clients requesting services.

Although the primary method for enrolling applicants and new recipients for Choices services would be through the direct referrals from DHS for workforce orientation and employment planning sessions, Choices Program providers are encouraged to check for eligible clients on a regular basis for outreach purposes. As this is a local decision, the Commission does not intend to include this level of procedural and practice detail in the rule base for Choices. The Commission staff will provide technical assistance to local workforce development boards or their subcontractors on the methods and procedures for conducting outreach and ensuring that appropriate recipients are contacted for services.

Comment: A commenter requests adding a rule allowing local workforce development boards to refer to the TANF federal regulations when the state rules do not address an issue. The commenter feels that while the state rules are in accordance with the federal regulations, all aspects of the regulations are not included in the state rules.

Response: The Commission does not believe that it is necessary or appropriate to specify in state rules that local workforce development boards or any resident are permitted to view federal regulations or statute. The Commission will provide information and guidance to local workforce development boards regarding the federal requirements.

Comment: A commenter states that it does not appear that private employers are carrying any responsibility for providing transportation or child care services during and after job placement. The commenter suggests that employers who benefit from having subsidized employees and, in some cases, hire them should share in the burden of caring for their workers. The commenter asks if the Commission has explored potential employer requirements that involve the employers sharing the cost of these services in programs such as subsidized employment, work skills training, and the Texans Work Program.

Response: Employers participating in the subsidized employment program are required to offer the same level of pay and benefits to subsidized employees as normally offered to employees in similar, unsubsidized positions, as stipulated in §811.42(c)(2). Employers who offer transportation or child care to unsubsidized employees would be

expected to offer the same assistance to the subsidized employee. Employers participating in the Texans Work Program have limited and specific responsibilities under the program as enacted in state legislation, Senate Bill 781. These responsibilities are to provide quality training, to provide skills certification, to report attendance, and to pay the employer's portion of the training stipend. It is the Commission's opinion that employers participating in the Texans Work Program or other training programs cannot be required to provide additional benefits without a legislative change. The Texas Work and Family Clearinghouse (Clearinghouse), a program administered by the Commission, is working to develop awareness and support among employers on dependent care issues facing employees. The state funds the Clearinghouse to create employer-led coalitions that support dependent care services in Texas communities.

Comment: A commenter states that, although the goals of both DHS and the Commission are to help people receiving assistance become self-sufficient, a large percentage of the recipients do not receive the right type of assistance.

Response: Both the federal and state welfare reform laws enacted strong individual responsibility provisions, but also provided for necessary support services to assist clients in meeting self-sufficiency expectations. The state reform shifted control of job training and employment programs to a local level, under the leadership of local workforce development boards. Persons familiar with the needs of residents in the community, rather than state government, design the services. Choices services are integrated with other programs and delivered through a network of one-stop career centers. At these centers, Choices participants may access an array of services that can help them transition to self-sufficiency. The rules in Chapter 811 set forth the policies governing the employment and support services to be provided. Individualized employability plans, based on an assessment of each client's needs, are the basis for ensuring that clients have access to necessary resources to increase employability.

Comment: A commenter states that recipients are sent out on low-income jobs because they do not have necessary skills. The commenter suggests that recipients need more help with education and training. Many recipients are not allowed to continue education, or do not receive the support to continue the education or training. The commenter asserts that loans and Pell grants do not help people with low income, because they do not have the ability to repay the loans.

Response: The State of Texas is committed to ensuring that support services, including education and training, are available, if needed, to help recipients obtain a job or to gain better wages. The goal of the Choices Program is to ensure that all cash assistance applicants and recipients obtain, at the earliest opportunity, employment that leads to self-sufficiency. The program is designed to allow all families the opportunity to obtain employment; to gain work experience; and to have access to post-employment education, training, and support so that families may more fully realize their career goals and reach self-sufficiency. Due to the time limits on cash assistance, we believe that the best service to clients is to help them find employment as soon as possible, to provide temporary support to the clients once they have found employment, and to help and encourage clients to make plans for meeting longer-term educational goals after they are employed.

Comment: A commenter states that Commission staff does not do all that they can to properly inform clients of the things they should know. Clients should be given receipts for paperwork.

Response: At the point of application for TANF benefits, clients sign a personal responsibility agreement at DHS that explains their eligibility requirements. Throughout the Choices service delivery process, clients are provided both oral and written information that explains their employment services requirements. Clients also are involved in developing an employability plan that they agree to by signing. Choices staff reinforce these requirements from the point of workforce orientation throughout the employability planning process.

40 TAC §§811.1-811.5, 811.10-811.23, 811.60

The repeals are adopted under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The repeals of old sections are also adopted under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 1998.

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Texas Workforce Commission

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For further information, please call: (512) 463-8812

Chapter 811. Choices

Subchapter A. General Provisions

40 TAC §811.1, §811.2

The new sections are adopted under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The new sections are also adopted under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

§811.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1)

Choices -- The program formerly known as the Job Opportunities and Basic Skills Training (JOBS) program.

(2)

Choices staff -- Any personnel assigned to functions responsible for providing direct employment services or support services for applicants and recipients of temporary cash assistance. This term applies to TWC staff, to staff of Local Workforce Development Boards, and to contracted service providers.

(3)

Commission -- The Texas Workforce Commission (TWC).

(4)

DHS -- The Texas Department of Human Services.

(5)

Employability plan -- A plan developed by Choices staff and a participant that is based on an individual and family assessment, that delineates the goal of self-sufficiency through employment, and sets out the steps necessary to achieve the goal. The plan, signed by the participant and the Choices staff member, is the participation agreement for compliance purposes.

(6)

Employment entry -- Entry of a participant into an unsubsidized, paid job or when a participant begins a personal business, a farm, or other self-employment enterprise.

(7)

Exempt -- The status of a recipient of temporary cash assistance who is not required to participate in employment services activities, as determined by DHS staff.

(8)

Exemptions -- Criteria established by DHS that permanently or temporarily excuse a recipient of temporary cash assistance from the employment services participation requirements.

(9)

GED -- Abbreviation for General Educational Development, a trademark for a series of tests measuring skill in writing, social studies, science, reading, and math at the high school level; the initials sometimes refer to the equivalency certificate (formal name in Texas: Certificate of High School Equivalency).

(10)

Good cause determination -- A decision by Choices staff that a participant is not able at the current time to participate in employment services or in ancillary services required as part of the employability plan.

(11)

Individual development account (IDA) -- A state-established account for deposits by a recipient of temporary cash assistance and any matching funds from employers or other community organizations to be used for specific purposes.

(12)

JTPA -- The Job Training Partnership Act and the programs established under such laws to prepare youth and adults facing barriers to employment for participation in the labor force by providing job training and other job services.

(13)

Job skills training -- Training in technical job skills and equivalent knowledge and abilities in a specific occupational area offered by post-secondary institutions, secondary schools, public and private agencies, and other organizations.

(14)

Local workforce development board -- An entity formed under Texas Government Code, Title 10, Subchapter F and as detailed in §8.801(b) of this title (relating to Requirements for Formation of Local Workforce Development Boards).

(15)

Nonexempt -- The status of a recipient of temporary cash assistance who is required to participate in employment services activities, as determined by DHS staff.

(16)

Participant -- A person who is enrolled in Choices services.

(17)

Penalty -- A reduction in a family's temporary cash assistance grant applied by DHS staff when a nonexempt recipient is sanctioned. The financial penalty is equal to the needs amount for one parent each month of the sanction period. In two parent families, if both parents are sanctioned, the penalty is equal to the needs amount for both parents. See definition of sanction.

(18)

Sanction -- Action taken by DHS staff when a nonexempt recipient of temporary cash assistance does not comply with employment services requirements. See definition of penalty.

(19)

Subsidized employment -- A time-limited training position that meets suitability and non-displacement requirements of the Federal Unemployment Tax Act and other federal laws.

(20)

TAC -- Texas Administrative Code.

(21)

Temporary cash assistance -- A cash grant provided through DHS to persons who meet certain residency, income, and resource criteria as provided for under the federal Personal Responsibility and Work Opportunity Reconciliation Act and the Temporary Assistance for Needy Families block grant statutes and regulations. The acronym used for this assistance is TANF. The former name was Aid to Families with Dependent Children or AFDC.

(22)

Vocational education -- Courses offered by an institution of higher learning that include organized units of technical or vocational instruction and training which are directly related to the acquisition or updating of occupational skills and for which a certificate or an associate of applied science is awarded.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter B. Eligibility and Participation

40 TAC §§811.11-811.20

The new sections are adopted under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The new sections are also adopted under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

§811.13. Good Cause.

A recipient of temporary cash assistance who fails to comply with employment services requirements may have good cause if verified or otherwise demonstrated by the recipient to the satisfaction of Choices staff. Each of the following may constitute good cause.

(1)

The person is temporarily ill or incapacitated.

(2)

The person is incarcerated or has a court appearance.

(3)

The person is the parent or caretaker personally providing care for a child under the age of six and shall not be required to participate more than 20 hours per week. This good cause situation shall not apply to custodial parents who have not completed high school or its equivalent or to two parent families where one parent is able to care for the child.

(4)

The person is the caretaker of a physically or mentally disabled child who requires the caretaker's presence in the home.

(5)

The person demonstrates that there is no available transportation or there is a breakdown in transportation arrangements.

(6)

The person demonstrates that there is no available child care or there is a breakdown in child care arrangements.

(7)

There is a lack of other necessary support services and participation is not deemed possible without such services.

(8)

The person receives a job referral that results in an offer below the minimum wage, except for certain work-related, on-the-job training activities such as work skills training.

(9)

There are no available jobs within reasonable commuting distance, which means that travel from home to the job or training would require commuting time of more than two hours round trip, or the distance prohibits walking and transportation is not available.

(10)

A family crisis or family circumstances preclude participation, including being a victim of domestic violence. The recipient shall be expected to engage in problem resolution through appropriate referrals for counseling and supportive services. Good cause for domestic violence purposes shall be temporary and reevaluated within three months. Good cause shall not be extended beyond a total of twelve months for domestic violence purposes.

§811.18. Monitoring of Participation.

Choices staff shall monitor the participation in employment services activities, compliance with program requirements, and progress toward achieving the goals and objectives in the employability plan. Monitoring shall be ongoing and frequent, as determined by local workforce development boards or their subcontractors. Monitoring shall consist of tracking and reporting hours of participation, evaluation of the participant's progress in the assigned activity, and determining and arranging for any intervention needed to assist the participant in complying with program requirements.

§811.19. Individual Development Accounts.

(a)

Subject to available resources, individual development accounts (IDA) shall be established and administered by the Commission or by contract with a nonprofit, private, or public entity.

(b)

The account shall be administered to assist a recipient of temporary cash assistance participating in a work-related activity, including but not limited to the Subsidized Employment Program.

(c)

Use of funds in a participant's IDA is limited to expenses related to:

(1)

home ownership;

(2)

medical expenses;

(3)

education and training expenses such as tuition, books, and costs for qualifying examinations;

(4)

small business start-up; or

(5)

other types of asset accumulation.

(d)

The Commission reserves the right to place more restrictive limits for use of the individual development accounts through written guidelines.

(e)

Deposits made in an IDA may be matched by an employer, a community group, or a financial institution. Match is not considered as income.

§811.20. Employment Retention and Re-employment Services.

(a)

Monitoring of employment retention and reporting hours of employment are required for at least the length of time the participant receives temporary cash assistance.

(b)

Participant follow-up methods and timeframes shall be established through local policy and procedures, but shall occur no less often than monthly.

(c)

Employment retention and re-employment services may be made available to participants beyond denial of temporary cash assistance benefits. These services include but are not limited to the following:

(1)

assistance and support for the transition into employment through direct services or referrals to resources available in the area;

(2)

child care, if needed, as specified in rules at Chapter 809 of this title (relating to Childcare and Development);

(3)

work-related expenses, including those identified in §811.85 of this title (relating to Work-Related Expenses);

(4)

transportation necessary for a period of time to allow a participant who loses employment to engage in short-term, supported job search or related activities;

(5)

job readiness services and assisted intensive job search, as determined by local workforce development boards, to help a participant who loses employment find another job as quickly as possible;

(6)

job placement and job development services, as determined by local workforce development boards, to help a participant who loses employment find another job as quickly as possible; or

(7)

referrals to available education and training resources, as needed, to increase an employed participant's skills or to help the participant qualify for advancement and longer-term employment goals.

(d)

Employment retention and re-employment services may be provided by Commission staff, local workforce development boards, or contracted service providers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter C. Job Search-Related Activities

40 TAC §§811.31-811.34

The new sections are adopted under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The new sections are also adopted under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

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Subchapter D. Work-Based Programs

40 TAC §§811.41-811.45

The new sections are adopted under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The new sections are also adopted under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

§811.42. Subsidized Employment.

(a)

Enrollment.

(1)

Participants who, after an objective assessment of their skills, are determined by Choices staff to have the basic skills and attitudes necessary to succeed in the workplace may be placed in subsidized employment positions.

(2)

Participants, age 18 and older, who are unemployed after completing an initial job readiness and job search period may be required to enter into a subsidized employment position based on available resources and the participant's skills, interests, and employability plan.

(3)

Other participants may volunteer for a subsidized employment position.

(b)

Duration of the Activity. Participants in a subsidized employment position are encouraged to work between 35 and 40 hours per week for no more than four full months. Overtime is allowed by mutual agreement between the participant and the employer.

(c)

Wages.

(1)

Wages shall be at least minimum wage.

(2)

Employers must provide the same wages and benefits to subsidized employees as for unsubsidized employees with similar skills, experience, and position.

(3)

If overtime is earned, the employer is responsible for all wages in excess of 40 hours per week.

(4)

Upon submission of a monthly voucher supported by weekly time and attendance documentation, employers will be subsidized a portion of wages paid, as determined by contract. The subsidy is derived from the participant's temporary cash assistance and food stamp benefits which are diverted to the Commission to be distributed to the employer.

(d)

Status of Enrollment at Denial of Benefits. If a participant's temporary cash assistance benefits are denied while enrolled in a subsidized employment position, the employment subsidy ends with the effective date of denial.

Employers may decide whether or not to retain the participant in an unsubsidized employment position.

(e)

Status of Subsidized Employee. The subsidized employment participants are considered employees of the participating employer for purposes of state and federal labor laws.

§811.44. Texans Work Program.

(a)

Description. The Texans Work Program is on-the-job training for Choices participants.

(b)

Participating Employers. Employers or employer alliances or consortia may participate in the program upon approval by the Commission or by the Local Workforce Development Boards.

(c)

Approval of the Employer's Training Program. An employer's training program must be approved by the Commission in collaboration with the Texas Skills Standards Board following written guidelines to be developed by the Commission.

(d)

Employer Responsibilities. Employers, other approved organizations as stipulated in subsection (b) of this section, or subcontracted training providers are responsible for the following:

(1)

designing the training curriculum and providing the training;

(2)

providing one or more training positions for Choices participants;

(3)

contributing \$300 per month, to the Commission, for each trainee for the duration of the training program; and

(4)

reporting the trainee's attendance and other necessary information as established in written guidelines by the Commission or the Local Workforce Development Boards.

(e)

Participants in the Texans Work Program.

(1)

Participants who are unemployed after completing job search activities may be required to participate in a Texans Work assignment.

(2)

Choices staff shall make arrangements with the employers to provide candidates for the training positions.

Employers may conduct interviews or use other objective means to select appropriate trainees for the available positions.

(3)

Excessive, unexcused absences by a participant, as defined by the employer and based on the participant's employability plan, shall be subject to a pro-rata reduction in the amount of the training stipend received under subsection (h) of this section.

(f)

Duration of the Placement. The length of a training course shall be in compliance with the Texas Labor Code, Subtitle B, Title 4, Chapter 308.

(g)

Exception to Duration. The workforce development division may approve an exception to subsection (f) of this section. The workforce development division will consider the specific training needs in granting an exception.

(h)

Training Stipend. Each participant making satisfactory progress in the training program as set forth in the course curriculum shall receive a monthly training stipend of \$600 in addition to the temporary cash assistance and other financial assistance authorized by DHS staff.

§811.45. Self-Employment Assistance.

(a)

Subject to available resources, the Commission shall, or Local Workforce Development Boards may, provide for self-employment assistance services for appropriate Choices participants to enable them to begin or continue a small business. For the purpose of this subsection, a small business has five or fewer employees.

(b)

Self-employment assistance may include a microenterprise development program, centrally administered by the Commission. The Commission may contract with credit organizations to provide individual loans and business counseling services to eligible participants for authorized services. These loans must be repaid.

(c)

Participants shall be selected for self-employment assistance through an objective assessment process that will identify participants that are likely to succeed as a business owner.

(d)

Self-employment assistance services available to all participants in the program shall include, but not be limited to:

(1)

entrepreneurial training, a required activity for each participant in the program;

(2)

business counseling;

- (3)
financial assistance; or
(4)
technical assistance.

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Subchapter E. Educational and Other Training Activities

40 TAC §§811.61-811.65

The new sections are adopted under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The new sections are also adopted under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

§811.62. Educational Activities.

Choices staff may authorize, arrange, or refer participants for the following educational activities if deemed necessary for finding employment:

- (1)
secondary school leading to a high school diploma;
- (2)
a course of study leading to a certificate of high school equivalency;
- (3)
basic skills and literacy;
- (4)
English proficiency; or
- (5)
post-secondary vocational education, for up to 12 months, that prepares participants for employment in current and emerging occupations that do not require a baccalaureate or advanced degree. On an individual basis, completion of self-initiated education currently in progress at the associates, baccalaureate, or advanced degree level may be approved within the twelve-month time frame.

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Subchapter F. Support Services

40 TAC §§811.81-811.87

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§811.87. GED Testing Payments.

The cost of GED testing and issuance of the certificate shall be paid by the Commission, Local Workforce Development Board, or the board's services provider through direct payments to the GED test centers and the Texas Education Agency for participants referred for testing by Choices staff.

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Subchapter G. Appeals

40 TAC §811.101

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§811.101. Fair Hearings or Appeals.

(a)

Applicants and recipients of temporary cash assistance may appeal adverse action taken on their application for benefits or amount of benefits to DHS in accordance with DHS' rules located at §3.2406 of this title (relating to Right to Appeal).

(b)

Persons who are dissatisfied with decisions of Choices staff relating to Choices activities or support services may file an appeal of the decision. The request must be submitted in writing to the Appeals Department, Texas Workforce Commission, 101 East 15th Street, Room 410; Austin, Texas 78778-0001, within 30 calendar days after being notified in writing of the decision. Choices staff shall inform participants of their right to appeal a decision of Choices staff related to employment services or support services and the procedures for requesting a fair hearing. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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